IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.   :   09/474,783   Confirmation No.:   2707
Applicant   :   Newell et al.
Filed   :   December 30, 1999
TC/A.U.   :   2623
Examiner   :   Shang, Annan Q.

Docket No.   :   1020.P6929

Mail Stop Appeal Brief
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

This Appeal Brief is in furtherance of the Notice of Appeal filed on November 19, 2007 and the Notice of Panel Decision from Pre-Appeal Brief Review mailed March 5, 2008. The Appeal Brief contains the following sections in the order set forth below:

I.   REAL PARTY IN INTEREST

II.   RELATED APPEALS AND INTERFERENCES

III.   STATUS OF CLAIMS

IV.   STATUS OF AMENDMENTS

V.   SUMMARY OF THE CLAIMED SUBJECT MATTER

VI.   GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

VII.   ARGUMENT

VIII.   CLAIMS APPENDIX

IX.   EVIDENCE APPENDIX

X.   RELATED PROCEEDINGS APPENDIX

I.   REAL PARTY IN INTEREST

The real party in interest in this appeal is Intel Corporation, as the Assignee of record.

II.   RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences that will directly affect, or be affected by, or have a bearing on the decision of the Board in the pending appeal.

III.   STATUS OF CLAIMS

Claims originally filed: 1-25

Claims canceled: 2, 3, 8-11

Claims withdrawn from consideration: None

Claims allowed: None

Claims objected to: None

Claims rejected: 1, 4-7, 12-25

Claims on appeal: 1, 4-7, 12-25

IV.   STATUS OF AMENDMENTS

No Amendments have been filed subsequent to the Final Rejection mailed on July, 18, 2007.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

The following is a concise explanation of the subject matter defined in each of the independent claims involved in the appeal. Independent claims 1, 7, 19 and 22 are fully supported, concisely explained, and map to the specification and drawings.

Independent claim 1 maps to the specification and to the drawings as follows.

Claim 1	Specification and Drawings
1. A system comprising	The present invention relates to a system for controlling use of broadcast content. **Page 2, line 30.**
a receiver in communication with a source of broadcast content	Referring now to **Fig. 1**, in accordance with a first embodiment of the present invention a system **10** for controlling use of broadcast content includes a receiver **12** in communication with a broadcast content source **16**. **Page 3, lines 4-6 and Fig. 1.**
and coupled to a playback device and a storage device,	Receiver **12** is coupled to a playback device **14**. **Page 3, lines 6-7.** Looking more closely at receiver **20** in **Fig. 2**, storage manager **40** is coupled to a storage device **38**. Storage device **38** may be implemented using any device capable of supporting storage and retrieval of digital data. For example, storage device **38** may be a hard drive installed in a computer in which receiver **20** is implemented or, alternatively, a stand-alone disk drive or other memory in communication with receiver **20**. **Page 6, lines 24-28 and Fig. 2.**
the receiver comprising a data interface having an Internet Protocol (IP) data module to process a broadcast stream comprising IP encapsulated data,	Alternatively, broadcast stream **18** may comprise digital content transmitted by broadcast content source **16** in accordance with any of a large number of well-known protocols, including but not limited to MPEG2 and IP (Internet Protocol). In such an implementation, digital content can be transmitted as encapsulated data, such as IP data included within (i.e., "tunneled" within) private sections of an MPEG2 data stream, or the digital content can be

	transmitted as a native type on an MPEG2 transport stream using, for example, well-known protocols in the MPEG family of standards such as DSM-CC Download Protocol, Data Carousel, and Object Carousel. **Page 3, lines 13-20.**
the receiver to control the use of received broadcast content through the playback device and the storage device in accordance with a descriptor embedded in the received broadcast content,	In accordance with the embodiment shown in **Fig. 1**, broadcast stream **18** includes descriptive information (not shown), called a "descriptor," which defines the manner in which the digital content included in broadcast stream **18** may be used. **Page 3, lines 28-30.** In this particular embodiment, receiver **12** interprets and acts upon the information carried in the descriptor. **Page 4, lines 3-4.**
the descriptor to indicate whether the storage device may store the received broadcast content prior to viewing and without reproducing the received broadcast content,	For example, as is discussed further below, the descriptor may define whether a television show, a movie, or other digital content within broadcast stream **18** can be recorded for viewing at some later time. **Page 3, lines 30-33.**
and once stored, a number of times the playback device may reproduce the received broadcast content.	Likewise, the descriptor can include information relating to the number of times that the digital content may be viewed, the cost for viewing (e.g., on a per-viewing basis), and how long the digital content may be viewed (e.g., a predefined length of time, a date range). **Page 3, line 33 – Page 4, line 3.**

Independent claim 7 maps to the specification and to the drawings as follows.

Claim 7	Specification and Figures
7. A method comprising:	By way of further illustration, **Fig. 3** presents a flow diagram describing a general method for controlling the use of broadcast content in accordance with another embodiment of the present invention. **Page 8, lines 16-18 and Fig. 3.**
receiving broadcast content comprising Internet Protocol (IP) encapsulated data;	As shown, the method involves receiving broadcast content (**Step 100**). **Page 8, lines 19-20.**

	Alternatively, broadcast stream **18** may comprise digital content transmitted by broadcast content source **16** in accordance with any of a large number of well-known protocols, including but not limited to MPEG2 and IP (Internet Protocol). In such an implementation, digital content can be transmitted as encapsulated data, such as IP data included within (i.e., "tunneled" within) private sections of an MPEG2 data stream, or the digital content can be transmitted as a native type on an MPEG2 transport stream using, for example, well-known protocols in the MPEG family of standards such as DSM-CC Download Protocol, Data Carousel, and Object Carousel. **Page 3, lines 13-20.**
processing the IP encapsulated data by extracting a descriptor embedded in the received broadcast content,	In this particular embodiment, receiver **12** interprets and acts upon the information carried in the descriptor. In other embodiments, it is possible to configure playback device **14** or some other component of system **10** to perform some or all of the functionality of receiver **12** with respect to processing the descriptor. Likewise, it is possible to configure receiver **12** or such other components to include defaults with respect to authorized uses of digital content that will be applied in the event that broadcast stream **18** either lacks a descriptor or includes invalid/insufficient descriptive information. **Page 4, lines 3-9.**
the descriptor to indicate whether the received broadcast content may be stored prior to viewing and without reproducing the received broadcast content,	For example, as is discussed further below, the descriptor may define whether a television show, a movie, or other digital content within broadcast stream **18** can be recorded for viewing at some later time. **Page 3, lines 30-33.**
and once stored, a length of time the received broadcast content may be reproduced;	Likewise, the descriptor can include information relating to the number of times that the digital content may be viewed, the cost for viewing (e.g., on a per-viewing basis), and how long the digital content may be viewed (e.g., a predefined length of time, a date range). **Page 3, line 33 – Page**

	4, line 3.
controlling use of the received broadcast content in accordance with the extracted descriptor;	In this particular embodiment, receiver **12** interprets and acts upon the information carried in the descriptor. In other embodiments, it is possible to configure playback device **14** or some other component of system **10** to perform some or all of the functionality of receiver **12** with respect to processing the descriptor. Likewise, it is possible to configure receiver **12** or such other components to include defaults with respect to authorized uses of digital content that will be applied in the event that broadcast stream **18** either lacks a descriptor or includes invalid/insufficient descriptive information. **Page 4, lines 3-9.**
wherein the extracted descriptor indicates a number of times that the received broadcast content may be reproduced.	Likewise, the descriptor can include information relating to the number of times that the digital content may be viewed, the cost for viewing (e.g., on a per-viewing basis), and how long the digital content may be viewed (e.g., a predefined length of time, a date range). **Page 3, line 33 – Page 4, line 3.**

Independent claim 19 maps to the specification and to the drawings as follows.

Claim 19	Specification and Figures
19. A machine-readable medium having stored thereon a set of executable instructions to perform a method comprising:	Embodiments of the present invention may be distributed, for example, as a set of instructions residing on a storage medium. Such a storage medium might be a memory of a computer; a piece of firmware; a portable storage device, such as a diskette or other magnetic storage device, or a CD-ROM; or any other medium on which it is known to store executable instructions. **Page 8, lines 29-33.**
receiving broadcast content comprising Internet Protocol (IP) encapsulated data;	As shown, the method involves receiving broadcast content (**Step 100**). **Page 8, lines 19-20.** Alternatively, broadcast stream **18** may comprise digital content transmitted by broadcast content source **16** in accordance

	with any of a large number of well-known protocols, including but not limited to MPEG2 and IP (Internet Protocol). In such an implementation, digital content can be transmitted as encapsulated data, such as IP data included within (i.e., "tunneled" within) private sections of an MPEG2 data stream, or the digital content can be transmitted as a native type on an MPEG2 transport stream using, for example, well-known protocols in the MPEG family of standards such as DSM-CC Download Protocol, Data Carousel, and Object Carousel. **Page 3, lines 13-20.**
processing the IP encapsulated data by extracting a descriptor embedded in the received broadcast content,	In this particular embodiment, receiver **12** interprets and acts upon the information carried in the descriptor. In other embodiments, it is possible to configure playback device **14** or some other component of system **10** to perform some or all of the functionality of receiver **12** with respect to processing the descriptor. Likewise, it is possible to configure receiver **12** or such other components to include defaults with respect to authorized uses of digital content that will be applied in the event that broadcast stream **18** either lacks a descriptor or includes invalid/insufficient descriptive information. **Page 4, lines 3-9.**
the descriptor to indicate whether the received broadcast content may be stored prior to viewing and without reproducing the received broadcast content,	For example, as is discussed further below, the descriptor may define whether a television show, a movie, or other digital content within broadcast stream **18** can be recorded for viewing at some later time. **Page 3, lines 30-33.**
and once stored, a length of time the received broadcast content may be reproduced;	Likewise, the descriptor can include information relating to the number of times that the digital content may be viewed, the cost for viewing (e.g., on a per-viewing basis), and how long the digital content may be viewed (e.g., a predefined length of time, a date range). **Page 3, line 33 – Page 4, line 3.**
and controlling use of the received broadcast content in accordance with the	In this particular embodiment, receiver **12** interprets and acts upon the information

| extracted descriptor; | carried in the descriptor. In other embodiments, it is possible to configure playback device **14** or some other component of system **10** to perform some or all of the functionality of receiver **12** with respect to processing the descriptor. Likewise, it is possible to configure receiver **12** or such other components to include defaults with respect to authorized uses of digital content that will be applied in the event that broadcast stream **18** either lacks a descriptor or includes invalid/insufficient descriptive information. **Page 4, lines 3-9.** |
| wherein the extracted descriptor indicates a number of times that the received broadcast content may be reproduced. | Likewise, the descriptor can include information relating to the number of times that the digital content may be viewed, the cost for viewing (e.g., on a per-viewing basis), and how long the digital content may be viewed (e.g., a predefined length of time, a date range). **Page 3, line 33 – Page 4, line 3.** |

Independent claim 22 maps to the specification and to the drawings as follows.

Claim 22	Specification and Figures
22. A system comprising	The present invention relates to a system for controlling use of broadcast content. **Page 2, line 30.**
a receiver in communication with a source of broadcast content	Referring now to **Fig. 1**, in accordance with a first embodiment of the present invention a system **10** for controlling use of broadcast content includes a receiver **12** in communication with a broadcast content source **16**. **Page 3, lines 4-6 and Fig. 1.**
and coupled to a playback device and a storage device,	Receiver **12** is coupled to a playback device **14**. **Page 3, lines 6-7.** Looking more closely at receiver **20** in **Fig. 2**, storage manager **40** is coupled to a storage device **38**. Storage device **38** may be implemented using any device capable of supporting storage and retrieval of digital data. For example, storage device **38** may be a hard drive installed in a

	computer in which receiver **20** is implemented or, alternatively, a stand-alone disk drive or other memory in communication with receiver **20**. **Page 6, lines 24-28 and Fig. 2.**
the receiver comprising a data interface having an Internet Protocol (IP) data module to process a broadcast stream comprising IP encapsulated data,	Alternatively, broadcast stream **18** may comprise digital content transmitted by broadcast content source **16** in accordance with any of a large number of well-known protocols, including but not limited to MPEG2 and IP (Internet Protocol). In such an implementation, digital content can be transmitted as encapsulated data, such as IP data included within (i.e., "tunneled" within) private sections of an MPEG2 data stream, or the digital content can be transmitted as a native type on an MPEG2 transport stream using, for example, well-known protocols in the MPEG family of standards such as DSM-CC Download Protocol, Data Carousel, and Object Carousel. **Page 3, lines 13-20.**
the receiver to control the use of received broadcast content through the playback device and the storage device in accordance with a descriptor embedded in the received broadcast content,	In accordance with the embodiment shown in **Fig. 1**, broadcast stream **18** includes descriptive information (not shown), called a "descriptor," which defines the manner in which the digital content included in broadcast stream **18** may be used. **Page 3, lines 28-30.** In this particular embodiment, receiver **12** interprets and acts upon the information carried in the descriptor. **Page 4, lines 3-4.**
the descriptor to indicate whether the storage device may store the received broadcast content prior to viewing,	For example, as is discussed further below, the descriptor may define whether a television show, a movie, or other digital content within broadcast stream **18** can be recorded for viewing at some later time. **Page 3, lines 30-33.**
and once stored, a number of times the playback device may reproduce the received broadcast content.	Likewise, the descriptor can include information relating to the number of times that the digital content may be viewed, the cost for viewing (e.g., on a per-viewing basis), and how long the digital content may be viewed (e.g., a predefined length of time, a date range). **Page 3, line 33 – Page**

	4, line 3.

VI.   GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1, 4-7 and 12-25 are unpatentable under 35 U.S.C. § 103(a) over

Gotwald (U.S.5,987,518) in view of Horton et al (U.S. 4,945,563) and further in view of

Russo (U.S. 5,619,247).

VII.   ARGUMENT

Applicant respectfully submits that Gotwald, Horton et al., and Russo, whether

taken alone or in combination, are insufficient to establish a *prima facie* case of

obviousness with respect to the amended independent claims. According to MPEP §

2143, three basic criteria must be met to establish a *prima facie* case of obviousness.

First, there must be some suggestion or motivation, either in the references themselves or

in the knowledge generally available to one of ordinary skill in the art, to modify the

reference or to combine reference teachings. Second, there must be a reasonable

expectation of success. Finally, the reference (or references when combined) must teach

or suggest all the claim limitations. The teaching or suggestion to make the claimed

combination and the reasonable expectation of success must both be found in the prior art

and not based on applicant's disclosure. *In re Vaeck,* 947 F.2d 488, 20 USPQ2d 1438

(Fed. Cir. 1991). See MPEP 706.02(j).

Applicant respectfully submits that the cited references, taken alone or in

combination, fail to teach or suggest every element recited in claims 1, 4-7 and 12-25.

Therefore claims 1, 4-7 and 12-25 define over Gotwald, Horton and Russo whether taken

alone or in combination. For example, claim 1 recites "a pay-per-use Internet Protocol

(IP) television broadcast stream." Applicant respectfully submits that neither Gotwald,

Horton and Russo teaches or suggests a pay-per-use Internet Protocol (IP) television

broadcast stream as recited in claim 1. For example, the cited portion of Gotwald

arguably discloses the encapsulation of IP data within a standard MPEG2 video stream.

The cited portions of Gotwald make it clear that the disclosed video stream is a standard

MPEG2 video stream and is not an IP stream. The MPEG2 video stream disclosed by

Gotwald arguably allows traditional IP data to be sent within a MPEG2 video stream;

however, video data such as a television broadcast stream is transmitted using a MPEG2

video stream. By way of contrast, the claimed subject matter discloses an "Internet

Protocol (IP) television broadcast stream." Therefore, Gotwald, Horton and Russo,

whether taken alone or in combination, fail to disclose, teach or suggest every element

recited in claim 1.

Additionally, Gotwald, Horton and Russo fail to teach, suggest or disclose

indicating "a number of times the playback device may reproduce the received broadcast

content" as recited in independent claim 1. According to the Office Action, this

limitation is disclosed by Russo at Col. 5, lines 1-47. Applicant respectfully disagrees.

Russo at the given cite, in relevant part, states, "a viewer may be allowed to view a

selected program <u>as many times as desired</u> over a particular, predetermined period of

time." Applicant respectfully submits that allowing a selected program to be viewed as

many times as desired for a predetermined period of time, as taught by Russo, is different

than restricting "a number of times the playback device may reproduce the received

broadcast content." Applicant submits that Russo in fact actually teaches away from

limiting the number of times broadcast content may be reproduced. Therefore, Gotwald,

Horton and Russo, whether taken alone or in combination, fail to disclose, teach or

suggest every element recited in claim 1.

Once again, Applicant respectfully submits that the cited references, taken alone

or in combination, also fail to teach suggest or disclose "a descriptor embedded in the

received broadcast content, the descriptor to indicate whether the storage device may

store the received broadcast content prior to viewing and without reproducing the

received broadcast content" as recited in independent claim 1. According to the Office

Action, the missing language is disclosed by Horton at column 3, lines 38-67. Applicant

respectfully disagrees. Horton at the given cite, in relevant part, states:

> The receiver 20 includes a descrambling circuit 26 which
> descrambles the television program and feeds it to a
> decoder 28. The decoder 28 decodes the coded information
> embedded in the TV signal and provides an indication to an
> operator of the various modes available with this particular
> program. …The modes which may be made available
> include view only, view and tape for fee, and view and tape
> for free. Depending upon the mode selected, the TV
> program will then be routed along conductor 34
> corresponding to view and tape for free; or through the
> copy protect circuit 36 where it would be formatted for to
> view and tape for a fee; or through antitape circuitry 38
> where it would be formatted for view only….

Applicant submits that Horton at the given cite, arguably, teaches the view only, view

and tape for fee and view and tape for free modes. Each of these steps, however,

involves viewing the descrambled television program. This is different from "a

descriptor embedded in the received broadcast content, the descriptor to indicate whether

the storage device may store the received broadcast content prior to viewing and without

reproducing the received broadcast content." For example, the language of claim 1

allows the storage device to "store the received broadcast content prior to viewing and

without reproducing the received broadcast content." Therefore, Gotwald, Horton and Russo, whether taken alone or in combination, fail to disclose, teach or suggest every element recited in claim 1.

Independent claims 7, 19 and 22 have been amended to recite features similar to those recited in amended independent claim 1. Therefore, Applicant respectfully submits that claims 7, 19 and 22 are not obvious and are patentable over Gotwald, Horton and Russo, taken alone or in combination, for reasons analogous to those presented with respect to claim 1. Accordingly, Applicant respectfully requests removal of the obviousness rejection with respect to claim 7, 19 and 22.

Furthermore, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. *See* MPEP § 2143.03, for example. Accordingly, claims 4-6 also are non-obvious and patentable over Gotwald, Horton and Russo, taken alone or in combination, at least on the basis of their dependency from claim 1. Furthermore, Applicant respectfully requests withdrawal of the obviousness rejection with respect to claims 12-18, 20-21 and 23-25 that depend from claims 7, 19 and 22 respectively, and therefore contain additional features that further distinguish these claims from Gotwald, Horton and Russo.

For at least the reasons given above, claims 1, 4-7 and 12-25 are non-obvious and represent patentable subject matter in view of the cited references, whether taken alone or in combination. Accordingly, removal of the obviousness rejection with respect to claims 1, 4-7 and 12-25 is respectfully requested. Further, Applicant submits that the above-recited novel features provide new and unexpected results not recognized by the cited

references. Accordingly, Applicant submits that the claims are not anticipated nor

rendered obvious in view of the cited references.

Respectfully submitted,

KACVINSKY LLC

/John F. Kacvinsky/

John F. Kacvinsky, Reg. No. 40,040
Under 37 CFR 1.34(a)

Dated: May 4, 2008

KACVINSKY LLC
C/O Intellevate
P.O. Box 52050
Minneapolis, MN 55402
(724) 933-5529

VIII. CLAIMS APPENDIX

1.   A system comprising a receiver in communication with a source of broadcast

content and coupled to a playback device and a storage device, the receiver comprising a

data interface having an Internet Protocol (IP) data module to process a broadcast stream

comprising IP encapsulated data, the receiver to control the use of received broadcast

content through the playback device and the storage device in accordance with a

descriptor embedded in the received broadcast content, the descriptor to indicate whether

the storage device may store the received broadcast content prior to viewing and without

reproducing the received broadcast content, and once stored, a number of times the

playback device may reproduce the received broadcast content.

2.   (Canceled)

3.   (Canceled)

4.   The system of claim 1, wherein the receiver is further to maintain information

relating to the use of the received broadcast content through the playback device.

5.   The system of claim 4, wherein the receiver is further to use the information

relating to the use of the received broadcast content for remuneration of a provider of the

broadcast content.

6.   The system of claim 5, wherein the information relating to the use of the received broadcast content comprises a duration of use.

7.   A method comprising:

receiving broadcast content comprising Internet Protocol (IP) encapsulated data;

processing the IP encapsulated data by extracting a descriptor embedded in the received broadcast content, the descriptor to indicate whether the received broadcast content may be stored prior to viewing and without reproducing the received broadcast content, and once stored, a length of time the received broadcast content may be reproduced;

controlling use of the received broadcast content in accordance with the extracted descriptor;

wherein the extracted descriptor indicates a number of times that the received broadcast content may be reproduced.

8.   (Canceled)

9.   (Canceled).

10.   (Canceled)

11.   (Canceled)

12.   The method of claim 7, wherein the length of time includes a date range.

13.   The method of claim 7, wherein the extracted descriptor comprises billing information.

14.   The method of claim 13,wherein the billing information comprises a cost for consumption of the broadcast content.

15.   The method of claim 7, wherein the controlling use comprises preventing use of the broadcast content other than as specified by the extracted descriptor.

16.   The method of claim 7, further comprising obtaining payment information from a user of the received broadcast content.

17.   The method of claim 7, further comprising communicating consumption information to a billing facility.

18.   The method of claim 17, wherein the billing facility comprises a facility maintained by a provider of the received broadcast content.

19.   A machine-readable medium having stored thereon a set of executable instructions to perform a method comprising:

receiving broadcast content comprising Internet Protocol (IP) encapsulated data;

processing the IP encapsulated data by extracting a descriptor embedded in the received broadcast content, the descriptor to indicate whether the received broadcast content may be stored prior to viewing and without reproducing the received broadcast content, and once stored, a length of time the received broadcast content may be reproduced; and

controlling use of the received broadcast content in accordance with the extracted descriptor;

wherein the extracted descriptor indicates a number of times that the received broadcast content may be reproduced.

20.   The storage medium of claim 19, wherein the storage medium comprises a memory accessible by a computer.

21.   The storage medium of claim 19, wherein the storage medium comprises a portable storage device.

22.   A system comprising a receiver in communication with a source of broadcast content and coupled to a playback device and a storage device, the receiver comprising a data interface having an Internet Protocol (IP) data module to process a broadcast stream comprising IP encapsulated data, the receiver to control the use of received broadcast content through the playback device and the storage device in accordance with a descriptor embedded in the received broadcast content, the descriptor to indicate whether the storage device may store the received broadcast content prior to viewing, and once

stored, a number of times the playback device may reproduce the received broadcast

content.

23.   The system of claim 22, wherein the receiver is further to maintain information

relating to the use of the received broadcast content through the playback device.

24.   The system of claim 23, wherein the receiver is further to use the information

relating to the use of the received broadcast content for remuneration of a provider of the

broadcast content.

25.   The system of claim 24, wherein the information relating to the use of the

received broadcast content comprises a duration of use.

IX. EVIDENCE APPENDIX

None

X.   RELATED PROCEEDINGS APPENDIX

None